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FISCAL IMPACT REPORT

SPONSOR: HBIC DATE TYPED: 3/10/03 HB CS/538/aHJC/aHFL# 1

SHORT TITLE: Amend Nursing Home Administrators Act SB _____

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)
 Health Policy Commission (HPC)
 Board of Nursing
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HFL Amendment # 1

The House Floor Amendment # 1 removes the appropriation from the bill. RLD noted in the original bill that the \$50,000 was enough to pay the Sunrise Manager’s salary, to conduct the necessary investigations and hearings and to arrive at RLD’s recommendation to LFC. RLD further noted that that additional funds are needed for start-up costs for the new board. The department will be required to absorb the costs associated with this legislation.

Synopsis of HJC Amendment

The House Judiciary Committee Amendment makes changes to the definition of “residential care facility”. These changes include:

- Defining these facilities as “licensed” to provide program services. This change addresses a concern of the RLD.
- Denotes that the definition does not apply to residences with four or fewer individuals

providing needed habilitation and program services to developmentally disabled residents. The change would reduce the number of contract providers of services to DOH under the Developmentally Disabled and other federal waiver program who may be required to obtain licensure. This was a concern of DOH.

Synopsis of Original Bill

The House Business & Industry Committee Substitute appropriates \$50.0 from the general fund to the Regulation and Licensing department for expenditure in FY 03 and FY 04 to study the duties and responsibilities of administrators of residential care facilities. The bill also proposes a review and evaluation of a new board to license residential care administrators. Finally, the bill provides for the development of legislation and rules to create a new licensing board to govern the licensure of residential care administrators.

The bill contains an emergency provision.

Significant Issues

The bill requires:

- The Regulation and Licensing Department (RLD) to review and evaluate the proposed licensure of residential care administrators (RCFA) in accordance with the Sunrise Act and submit findings and recommendation to the Legislative Finance Committee (LFC) by September 1, 2003.
- RLD to draft legislation for introduction in the next session (following LFC approval) that would entail the implementation of RCFA licensure by July 1, 2004.

RLD notes that the Sunrise Act requires the “applicant group” (i.e. the group seeking licensure of the profession in question) to submit to the Sunrise Program managed by RLD the following:

- A letter of intent and;
- An application requesting licensure of the group in question with sufficient information and supporting materials to enable RLD to “fairly, adequately, and completely evaluate” the request for licensure of the profession.

RLD does not have legal jurisdiction to enter the RC facilities and obtain information substantiating the statements in the bill that “*the unregulated practice of RCFAs has resulted in many instances of actual harm to residents of RCFs.*” This information is critical to RLDs ability to evaluate whether RCFAs pose an actual threat and should be regulated to protect the health safety and welfare of the public.

SAA has legal authority to enter RCFs and gather and provide to RLD the information required by the Sunrise Act to support SAA’s proposed recommendation that RCFAs be licensed.

If the RLD report finds a need for the creation of a new board, and the LFC approves that finding, a substantial number of the administrators of contract providers of services to DOH under the Developmentally Disabled and other federal waiver programs may be required to obtain licensure or cease operations. This could have a significant impact on DOH long-term service

programs. However, under the current provisions of the bill, only the RLD would participate in the review and evaluation of the proposed regulatory extension.

In addition, the bill could require dual licensure for some administrators of DOH facilities. Currently some administrators are licensed as Long Term Care Administrators, but these facilities offer both long-term care and residential care services.

FISCAL IMPLICATIONS

The appropriation of \$50.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 04 shall revert to the general fund.

RLD indicates that the \$50,000 appropriation contained in this bill is enough to pay the Sunrise Manager's salary, to conduct the necessary investigations and hearings and to arrive at RLD's recommendation to LFC. Any remaining amount of the appropriation will be used to pay for costs associated with drafting and supporting the legislation.

However, RLD indicates that funds are needed for start-up costs for the new board. That would include costs associated with staffing and with convening meetings of the newly enacted board in order to draft regulations after the bill is signed; to conduct public rule hearings around the state; to promulgate, prepare, and distribute the regulations; and to administratively implement the regulations by July 1, 2004, as required in HBICS.

ADMINISTRATIVE IMPLICATIONS

The Sunrise process requires the "applicant group" to provide RLD the documentation to support the argument that the profession in question, should be licensed. This provides half of the information needed.

Additionally, according to RLD, in order to evaluate the request, accurately and completely as required by the Sunrise Act, it will be necessary for the Sunrise Manager to gather additional information from the affected groups. This includes meeting with, the RCFAs, the residents, the residents' families, and the professional associations; as well as other states' agencies currently licensing RCFAs. The manager must also conduct public hearings around the state to arrive at a recommendation for the LFC. If LFC recommends licensure and if the legislature and the Governor enact legislation, additional administrative staff will be required to complete this process.

RLD expresses concern that the proposed appropriation may only be sufficient if RLD utilizes current management and administrative staff to complete the tasks required. The department states that this could have a negative impact on customer service and performance criteria of the boards.

A substantial number of the administrators of contract providers of services to DOH under the Developmentally Disabled and other federal waiver programs may be required to obtain licensure or cease operations. This could have a significant impact on DOH long-term service programs. In addition, the bill could lead to dual licensure for some DOH facility administrators.

TECHNICAL ISSUES

State Agency on Aging (SAA) is the “applicant group” seeking that the RCFAs be licensed “in accordance with the Sunrise Act”, but there is no provision in the bill for the SAA to meet the Sunrise requirements to provide RLD with the required information and supportive materials to enable RLD to review and study the request.

Therefore, the bill should be amended to contain language identifying the State Agency on Aging, as the “applicant group” requesting that RCFAs be licensed to meet the Sunrise Act requirements. This would provide RLD with the necessary information and supportive materials to conduct its study. (See proposed amendments below).

OTHER SUBSTANTIVE ISSUES

DOH is not opposed to a study. However, a requirement that all administrators of adult residential facilities be licensed would need to be addressed as part of future cost studies related to residential service provided by LTSD through both the DD Waiver and SGF programs. Agencies are currently facing increased administrative costs related to significantly higher insurance premiums and other operating costs. DOH/LTSD would need to study the impact of implementing this requirement and conduct a cost/benefit analysis related to our service providers. LTSD would like to participate in planning for the study and in making recommendations based on what is learned. (See Amendments below)

According to the Centers for Medicare and Medicaid, the Health Care Financing Administration (HCFA) is putting in place stronger federal oversight of nursing home inspections and monitoring quality of care (www.cms.gov).

HCFA also requires that states impose sanctions against nursing homes that have violated conditions that may have been harmful to their residents, and is working to establish standardization across facilities.

Violations can include the following conditions (*Quick Facts 2003*):

- Inadequate employee training
- Incorrect storage of food
- Insufficient number of staff to take care of patients
- Inadequate housekeeping and maintenance services

Residential care facilities may provide services at different levels of care, and serve a wide range of individuals. According to the NM Health Care Association:

- There are 171 licensed residential care facilities in the state, ranging in size from 2 residents to over 200 residents
- There are 37 licensed intermediate care facilities/mental retardation facilities with an average number 7.65 residents per facility
- There are 82 licensed nursing home facilities in the state.

AMENDMENTS

Specify that – in reviewing and evaluating the proposed licensure of residential care administra-

tors – the RLD should work with an interagency task force including representatives from DOH, HSD, CYFD and the State Agency on Aging.

The following amendments suggestions were submitted by RLD:

On page 2, amend lines 13-16 as follows:

“(1) require the department to review and evaluate the application and documenting materials required by the Sunrise Act and provided by the State Agency on Aging that support and substantiate the need for the proposed licensure of residential care administrators and provide a report to the legislative finance committee; and”

On page 2, amend lines 21-22 as follows:

“F. The department shall review and evaluate the application and documenting materials required by the Sunrise Act and provided by the State Agency on Aging that support and substantiate the need for the proposed licensure of residential care administrators in...”

On page 3, amend line 2-3 as follows:

“G. If the department’s recommendation is for licensure of residential care administrators, and if the recommendation is approved by the legislative finance committee, the department shall proceed with the development of...”

On page 3, amend lines 10-12 as follows:

“(2) “residential care facility” means a congregate residence, maternity shelter or other facility for adults licensed by the department of health, and whose primary purpose is to provide to the residents...”

If this amendment is adopted, residential facilities providing care to persons served by the DD waiver would not be effected by the legislation because most of these facilities are unlicensed.

On page 3, amend lines 24-25 as follows:

“residential care administrators and develop proposed legislation [~~and rules~~] to create a new licensing board to govern...”

On page 4, amend line 1-2 as follows:

“the licensure of residential care administrators, and if the legislation is enacted, to draft rules to regulate the residential care administrators.”

BD/njw:yr